

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JUDY HUNTER, et al.,

Plaintiffs,

vs.

BERKSHIRE HATHAWAY INC.,

Defendant.

No. 4:14-CV-663-Y

FINAL ORDER AND JUDGMENT

This action involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §§ 1001 *et seq.*, and the terms of the Acme Brick Company Pension Plan (“the Pension Plan”) and the Acme Brick Company 401(k) Plan (“the 401(k) Plan”) (the Pension Plan and the 401(k) Plan together are referred to as “the Plans”) set forth in Plaintiffs’ Amended Complaint (“Complaint”) dated October 5, 2016 (ECF No. 50).¹ The parties entered into a Class Action Settlement Agreement dated November 27, 2019 (the “Settlement Agreement”), which was filed on December 30, 2019 (ECF No. 132).

The Court previously entered an Order Granting Motion for Preliminary Approval of Settlement (“Preliminary Approval Order”) dated January 28, 2020 (ECF No. 133), preliminarily certifying the putative classes in this action for settlement purposes, ordering a Class Notice to be mailed and published on the internet, scheduling a Final Approval Hearing for May 13, 2020, at 10:30 a.m. CST, and providing Settlement Class Members with an opportunity to object to the proposed Settlement.

¹ This Order incorporates by reference the definitions in the Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”), and all terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set forth differently herein. The terms of the Settlement are fully incorporated in this Final Order and Judgment as if set forth fully herein.

1 This Court held a Final Approval Hearing on May 13, 2020, at 10:30 a.m. CST, to determine
2 whether to give final approval to the proposed Settlement.

3 Due and adequate notice having been given to the Settlement Classes as required in the
4 Preliminary Approval Order, and the Court having considered the Settlement Agreement, all papers filed
5 and proceedings held herein, and good cause appearing therefore,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

7 1. The Court has jurisdiction over the subject matter of this action and all parties to the
8 action, including all Settlement Class Members.

9 2. The classes this Court previously certified preliminarily in its Preliminary Approval
10 Order are hereby finally certified for settlement purposes under Federal Rule of Civil Procedure
11 (“Rule”) 23(b)(1) and/or (b)(2). The Settlement Classes are defined as follows:

12 i. The Pension Plan Settlement Class consists of all participants and former
13 participants in the Acme Brick Company Pension Plan who were employed by Acme on
14 October 4, 2014, together with their respective beneficiaries.

15 ii. The 401(k) Plan Settlement Class consists of all participants and former
16 participants in the Acme Brick Company 401(k) Retirement and Savings Plan who
17 contributed to an account with the 401(k) Plan at any time between January 1, 2010, and
18 December 31, 2013, together with their respective beneficiaries. Excluded from the
19 401(k) Settlement Class are participants and former participants for whom the employer’s
20 matching contribution between January 1, 2010, and December 31, 2013, was established
21 by a collective bargaining agreement.

22 3. The Court finds that each of the Pension Plan Settlement Class and the 401(k) Settlement
23 Class meets all requirements of Rule 23(a) for certification of the class claims alleged in the Complaint,
24 including (a) numerosity; (b) commonality; (c) typicality; and (d) adequacy of the class representatives
25 and Class Counsel.
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1 4. Additionally, the prerequisites of Rule 23(b)(1) have been satisfied, because the
2 prosecution of separate actions by individual Settlement Class Members would create a risk of (i)
3 inconsistent or varying adjudication which would establish incompatible standards of conduct for
4 Defendants; and (ii) adjudications with respect to individual Settlement Class Members, which would,
5 as a practical matter, be dispositive of the interests of the other members not parties to the adjudications
6 or would substantially impair or impede their ability to protect their interests.

7 5. Alternatively, the prerequisites of Rule 23(b)(2) have been satisfied, because Defendant
8 has acted or refused to act on grounds generally applicable to each Settlement Class, thereby making
9 appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class
10 as a whole.

11 6. Pursuant to Rule 23(a), the Court finds that plaintiffs Judy Hunter and Anita Gray are
12 Pension Plan Settlement Class Members, their claims are typical of those of the Pension Plan Settlement
13 Class, and they fairly and adequately protected the interests of the Pension Plan Settlement Class
14 throughout the proceedings in this Action. Accordingly, the Court hereby appoints Judy Hunter and
15 Anita Gray as Pension Plan Settlement Class representatives.

16 7. Pursuant to Rule 23(a), the Court finds that plaintiffs Judy Hunter, Anita Gray and Bobby
17 Lynn Allen are 401(k) Settlement Class Members, their claims are typical of those of the 401(k) Plan
18 Settlement Class, and they fairly and adequately protected the interests of the 401(k) Plan Settlement
19 Class throughout the proceedings in this Action. Accordingly, the Court hereby appoints Judy Hunter,
20 Anita Gray and Bobby Lynn Allen as 401(k) Plan Settlement Class representatives.

21 8. Having considered the factors set forth in Rule 23(g)(1), the Court finds that Class
22 Counsel have fairly and adequately represented the Settlement Classes for purposes of entering into and
23 implementing the Settlement, and thus, hereby appoints Keller Rohrback L.L.P. as Class Counsel to
24 represent the Settlement Class Members.

25 9. The appointment of Class Counsel and the appointment of the Named Plaintiffs as
26 Settlement Class representatives are fully and finally confirmed.

1 10. The Court directed that Class Notice be given pursuant to the Class Notice Program
2 proposed by the parties and approved by the Court. All requirements of the Class Notice Program have
3 been satisfied.

4 11. The Class Notice advised Settlement Class Members of: the terms of the Settlement; the
5 Final Approval Hearing and the right to appear at such Final Approval Hearing; the inability to opt out
6 of the Settlement Class; the right to object to the Settlement, including the right to object to the
7 Settlement or the application for an award of attorneys' fees and reimbursement of expenses; the
8 procedures for exercising such rights; and the binding effect of this Final Order and Judgment, whether
9 favorable or unfavorable, on the Settlement Class, including the scope of the releases provided for in
10 Section 3.2 of the Settlement Agreement.

11 12. The Class Notice Program met all applicable requirements of the Federal Rules of Civil
12 Procedure, the United States Code, the United States Constitution, 28 U.S.C. § 1715, and any other
13 applicable law. The Court further finds that the Class Notice Program approved by the Court complied
14 with the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and that it constituted the best
15 practicable notice under the circumstances. The Court further finds that the form of notice was concise,
16 clear, and in plain, easily understood language, and was reasonably calculated to apprise of the pendency
17 of the Action; the claims, issues and defenses of the Settlement Classes; the definition of the Settlement
18 Classes certified; the right to object to the proposed Settlement; the right to appear at the Final Approval
19 Hearing, through counsel if desired; and the binding effect of a judgment on members of the Settlement
20 Classes, including the scope of the releases provided for in Section 3.2 of the Settlement Agreement.

21 13. The Court finds after the Final Approval Hearing, and based upon all submissions of the
22 parties and interested persons, that the parties' proposed Settlement is fair, reasonable, and adequate.
23 The Court also finds that the proposed Settlement is consistent with and in compliance with all
24 applicable requirements of the Federal Rules of Civil Procedure, the United States Code, and the United
25 States Constitution, and other applicable law. In so finding, the Court has considered and found that:

- 26 a) The Settlement provides for significant benefit to the Plans and provides substantial
27 financial benefits to the Settlement Classes.

- 1 b) The terms and provisions of the Settlement were entered into by parties represented
2 by experienced counsel and only after extensive, arm's-length negotiations
3 conducted in good faith and with the assistance of an experienced third-party
4 mediator, Robert Meyer, Esq., of JAMS. The Settlement is not the result of
5 collusion.
- 6 c) The negotiations were supported by a robust investigation before commencement of
7 the action; review of correspondence, financial statements, corporate records, and
8 other documents publicly available and/or produced by Defendants during discovery;
9 the production and review of confidential documents protected by Federal Rule of
10 Evidence 408 during discovery; the production and review of confidential mediation-
11 privileged documents during mediation; extensive motion practice in this action; and
12 appellate proceedings in the Fifth Circuit Court of Appeals.
- 13 d) Approval of the Settlement will result in substantial savings of time, money, and
14 effort for the Court and the parties and will further the interests of justice. Defendant
15 denied and continues to deny Plaintiffs' claims and allegations, and raised various
16 factual and legal arguments in support of their vigorous defense in this action.

17 Accordingly, the Settlement shall be and hereby is approved and is given binding effect.

18 14. All Settlement Class Members are bound by this Final Order and Judgment and by the
19 terms of the Settlement, including the scope of the releases provided for in Section 3.2 of the Settlement
20 Agreement.

21 15. This Settlement, this Final Order and Judgment, and/or the fact of Settlement does not
22 constitute an admission by any of the parties of any liability, wrongdoing, or violation of law, damages
23 or lack thereof, or of the validity or invalidity of any claim or defense asserted in the action. If the
24 Settlement Agreement is not upheld on appeal, or is otherwise terminated for any reason, the Settlement
25 and all negotiations, proceedings, and documents prepared, and statements made in connection
26 therewith, shall be without prejudice to any party and shall not be deemed or construed to be an
27 admission by any party of any fact, matter, or position of law; and all parties shall stand in the same
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1 procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the
2 Court.

3 16. It is further ordered that, pursuant to Sections 3.1 and 3.2 of the Settlement Agreement,
4 upon the Effective Date of Settlement, Named Plaintiffs on behalf of themselves and on behalf of the
5 Settlement Classes and their respective heirs, successors, assigns and beneficiaries, absolutely and
6 unconditionally release and forever discharge Berkshire Hathaway Inc. and each of its current or former
7 subsidiaries and affiliates, and their respective employees, agents, directors, officers, members, insurers,
8 legal representatives and successors, of and from any and all actual or potential claims, actions, causes
9 of action, demands, obligations, liabilities, attorneys' fees, expenses and costs, whether asserted or
10 unasserted, whether known or unknown, that arise out of or are related to the allegations of the
11 Complaint (including without limitation any contention that Defendant or Acme was prohibited from
12 reducing, ceasing or freezing, or from causing the reduction, cessation or freeze of, the accrual of
13 benefits under the Pension Plan or the employer matching of contributions under the 401(k) Plan) that
14 were brought or that could have been brought as of the date of the Settlement Agreement by any
15 member of the Settlement Classes, except that Released Claims are not intended to include the release of
16 any of the following:

- 17 i. Any rights or duties expressly arising out of the Settlement Agreement, including any
18 express warranties and covenants in the Settlement Agreement;
19 ii. Any claims made under the Plans for individual benefits.

20 17. It is further ordered that, pursuant to Section 3.3 of the Settlement Agreement, upon the
21 Effective Date of Settlement, Berkshire Hathaway Inc., for itself and on behalf of each of its current or
22 former subsidiaries and affiliates, and their respective employees, agents, directors, officers, members,
23 insurers, legal representatives and successors, and their respective heirs, successors, assigns and
24 beneficiaries, absolutely and unconditionally releases and forever discharges the Named Plaintiffs, each
25 of the Settlement Classes and Plaintiffs' Counsel from any and all actual or potential claims, actions,
26 causes of action, demands, obligations, liabilities, attorneys' fees, expenses and costs, whether asserted
27 or unasserted, whether known or unknown, that arise out of or are related to the allegations of the
28 Complaint (including without limitation claims relating in any way to the institution or prosecution of


1 the action) that were brought or that could have been brought as of the date of the Settlement Agreement
2 by any of Berkshire Hathaway Inc., its current or former subsidiaries and affiliates, and their respective
3 employees, agents, directors, officers, members, insurers, legal representatives and successors.

4 18. The Court retains jurisdiction over the implementation, administration, and enforcement
5 of this Final Order and Judgment and the Settlement and all matters ancillary thereto.

6 19. The Court hereby dismisses with prejudice the action without costs to any of the parties
7 as against the others, except to the extent any costs are included in the Court's award of expenses in its
8 separate order on Plaintiffs' Counsel's request for approval of fees and expenses.

9 20. The Court finds that no reason exists for delay in ordering final judgment, and the clerk is
10 hereby directed to enter this Judgment forthwith.

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12 SIGNED May 13, 2020.

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15 Terry R. Means
16 United States District Court Judge
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